

# CITY PLANNING DEPARTMENT



## Memorandum – FINAL

**To:** City Plan Commission  
**From:** Kenneth R. Kirkland MPA, MRP, AICP; Asst. City Planning Director  
**Date:** December 5, 2023  
**RE:** Ordinance #10-23-01 – “State Legislation”  
**Proposed Amendment – Zoning Ordinance**

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### Proposal:

The Proposal amends §17.04.030 – Definitions, §17.20.030 – Table of Principal Use, §17.20.040 – Conformance to District Regulations, §17.20.130 – Modifications, Chapter 17.86 – Unified Development Review, §17.88.010 – Substandard Lots and Lot Mergers, §17.92.010 – Variances, §17.108.070 – Public Hearings, and 17.108.100 – Quorum of the Zoning Ordinance in accordance with the State Legislation package passed during the 2023 legislative session. An overview of each specific revision is included in the Planning Analysis section.

### Planning Analysis:

- §17.04.030 – Definitions
  - Adaptive Reuse – new definition cross-referencing existing definition in Rhode Island General Law.
  - Dimensional Variance – Simplifies definition to cross-reference existing statute relating to variances, (as amended).
  
- §17.20.030 – Table of Principal Use
  - “Specific and objective criteria” (H6059A) are now required for the issuance of **all** Special Use Permits. Any Zoning Ordinance that does not expressly provide such criteria, that use is now by-right. We currently have such criteria for certain uses, (drive-in businesses, 17.28; used car and rental businesses, 17.32; gasoline service stations, 17.48; nursing homes, 17.56; and telecommunication facilities, 17.76) which are **additional** to the special use permit findings outlined in §17.92.020(A)(1) and §17.92.020(A)(2).

The uses listed as “S” (use by special permit) had to be reviewed under this new requirement. Those with existing criteria remain as “S” while others were revised based upon the ability to regulate (non-residential uses) under the provisions of Development Plan Review, which does not change; there are also certain uses which could be reactivated as uses by special permit in the future once specific and objective criteria are established, this is a goal of the Department.

- The Zoning Official is now authorized to review a proposed use not specifically listed and determine whether it is similar to a use by special permit. Staff is unsure how this is to be interpreted, given the requirement for “specific and objective criteria.”
  
- §17.20.040 – Conformance to District Regulations
  - This is the “sliding scale provision” which permits principal structures, (dwellings) on substandard lots of record; i.e., existing, platted lots, with dimensional requirements that are reduced by the same proportion as the lot is substandard to the minimum requirements.

**Ordinance #10-23-01**

A-8	Required	Existing	Proposed
Area	8,000 sq. ft.	4,000 sq. ft.	4,000 sq. ft.
Lot width & frontage	80ft.	N/A	40ft.
Front yard setback	25ft.	N/A	12.5ft.
Rear yard setback	20ft.	N/A	10ft.
Side yard setback	10ft.	N/A	5ft.
Lot Coverage	30%	N/A	60%
Building Height	35ft.	N/A	N/A

- §17.20.130 – Modifications by the Building Official
  - Currently done in the City, allows the Building Official to sign off on certain reductions of quantitative, dimensional requirements, (setbacks, parking, signage, etc.) without having to apply to the Zoning Board of Review for variance, with certain notification requirements.
  - 5% or Less – Decision in 14 days rather than 30, no abutter notice or newspaper advertisement.
  - More than 5, Less than 25% – same abutter notice and newspaper advertisement requirements, if no objection, Decision in 14 days rather than 30; if there is an objection, application to Zoning Board is still required.

A-8	Required	Proposed	Approval Type
Side yard setback	10ft.	9.5ft.	B.O. w/o notice or advert.
		7ft. – 9.5ft.	B.O if no objection w/ notice and advert. ZBR if objection
		Closer than 7ft.	ZBR w/ variance

- Chapter 17.86 – Unified Development Review
  - Authorizes the City Plan Commission to review and approve variances and/or special use permits (act like the Zoning Board of Review) for subdivisions or land development projects if required for project.
  - The City Plan Commission shall make the same statutory findings for variances and/or special use permits as if they were the Zoning Board of Review.
  - The same public hearing, abutter notification, and newspaper advertisement requirements are applicable.
- §17.88.010 – Substandard Lots & Lot Mergers
  - Substandard lots are no longer automatically merged if they have an area greater than or equal to the average of half of the parcels within 200'. These and merged lots will then be subject to the provisions of the "sliding scale provision" of §17.20.040.
- §17.92.010 – Variances
  - The "least relief necessary" and "greater financial gain" findings have been eliminated.
  - The dimensional variance "mere inconvenience" hardship finding has been revised so that the **relief sought is minimal to the reasonable enjoyment of the permitted use**, rather than *there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property*.
  - There is clarification that the Zoning Board of Review or the City Plan Commission, (acting under Unified Development Review) is authorized to grant dimensional variances where a special use permit is sought.
- §17.108.070 – Public Hearings
  - Public hearing notices are to be posted in a local, rather than general newspaper, and shall be posted on the City's homepage, as well as posted in two (2) separate, physical locations in the City.
  - Decisions are no longer sent to the Division of Statewide Planning, who no longer wants to receive them.

- §17.108.100 – Quorum
  - Clarifies that four (4) members, including alternate members, constitute a quorum of the Zoning Board, and that the vote of three (3), not four (4) members are required to render a decision. This was added in at the request of the City Solicitor from the 2022 Legislative Session.

**Findings of Fact:**

In accordance with §17.120.030 of the Zoning Ordinance:

Comprehensive Plan Analysis

§17.120.030(A) requires that the City Plan Commission include, as part of its recommendation to the City Council; a statement on the general consistency of the proposal with the Comprehensive Plan.

The Proposal includes numerous updates to the development process, and ensuring Staff are informed on the nature of these updates is key to providing accurate and appropriate information to Applicants, residents, and developers, (EDP-9.1) as well as understanding how these updates impact development proposals and guiding Applicants accordingly, (EDP-9.2) which collectively speaks to having a clear, concise, and efficient development process in the City, (EDG-9).

Based on the above, Staff finds that Ordinance 10-23-01 is consistent with the Comprehensive Plan.

Zoning Ordinance Analysis

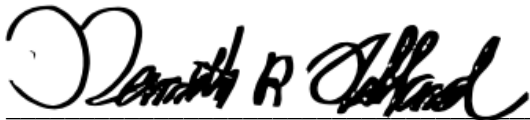
§17.120.030(B) requires that the City Plan Commission include, as part of its recommendation to the City Council; a demonstration of recognition and consideration of each of the applicable purposes of the Zoning Ordinance.

To the extent that the Proposal amends the Zoning Ordinance to maintain consistency with State law, Staff finds that the Proposal adequately addresses the appropriate purposes detailed in §17.04.010.

**Recommendation:**

In accordance with RIGL § 45-24-52 and §17.120.030 of the Zoning Ordinance, Staff finds this Amendment generally consistent with the goals and purposes of the Comprehensive Plan and is compatible with the general purposes of the Zoning Ordinance. Staff therefore recommends that the City Plan Commission adopt the Findings of Fact documented above and forward a **POSITIVE RECOMMENDATION** on the Application to the City Council.

Respectfully Submitted,



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Assistant City Planning Director

**Cc:** City Planning Director  
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